

HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION

This Document Relates to: ALL CASES

Master Case No. 2:09-cv-00037-MJP

**DECLARATION OF JOSEPH P.
GUGLIELMO IN OPPOSITION TO
DEFENDANTS' MOTION TO AMEND
SCHEDULING ORDER**

**NOTED ON MOTION CALENDAR:
August 5, 2011**

I submit this Declaration in opposition to Defendants' motion to amend scheduling order.

1. Specifically, Plaintiffs object to the length of and the prejudice that the requested extension of time will have on Plaintiffs' ability to litigate the case and complete fact discovery by December 1, 2011. Moreover, Defendants' delays in producing these and other documents has already required Plaintiffs to adjourn and reschedule a number of depositions.

2. Defendants seek an additional two months to produce documents. However, their request will cause significant delay to Plaintiffs and limit Plaintiffs' time to conduct a meaningful review of Defendants' production and will likewise limit and delay Plaintiffs' ability to take depositions.

1 3. Defendants' request of a two-month extension will delay Plaintiffs from
2 taking any substantive depositions until October – significantly shortening Plaintiffs' time to
3 conduct discovery and leaving Plaintiffs with just three months to review all of the millions
4 of pages of documents produced by Defendants and complete all of the fact depositions.

5 4. Indeed, Defendants in their request do not tell this Court that they failed to
6 identify, locate and begin the process of identifying WaMu Capital Corporation ("WCC")
7 documents until recently. It was not until a July 19, 2011 telephone call that Josh Devore of
8 Cohen Milstein and I had with Defendants that they disclosed they had not yet even
9 determined how to locate responsive documents on WCC's main shared computer drive and
10 that they were unable to anticipate the volume of responsive documents on that shared drive.

11 5. During the July 19 call, Defendants suggested they would need additional
12 time to complete document production, and even then suggested that it was only a matter of a
13 few weeks' delay. During that call, Plaintiffs told Defendants that they were reluctant to
14 consent to any extension and that Defendants should file a motion at that time to seek an
15 extension. Following the call, Plaintiffs offered a two-week extension, until August 12,
16 2011, to complete discovery so that there would be no other modifications to the scheduling
17 order.

18 6. Defendants waited until the day before the deadline to propose a modified
19 schedule of the form they propose in their motion.

20 7. To the extent that JPMorgan Chase has sought an extension, we understand
21 that Chase has stated that it can complete its production by August 12, 2011, and Plaintiffs
22 previously offered to discuss a separate extension with Chase.

23 8. Defendants have been in the possession of document requests since
24 approximately October of 2010, and they have provided no basis for why they have only
25 recently begun to identify and locate documents from WCC.

26 9. On March 24, 2011, Plaintiffs served a 30(b)(6) deposition notice concerning
27 the identification of documents and the process by which Defendants securitized the loans

1 and ultimately sold the Certificates to Plaintiffs and other class members. Defendants asked
2 to reschedule the deposition numerous times due to their delays in producing their
3 documents. Most recently, Defendants had agreed to schedule this deposition for August 11,
4 2011, but have now cancelled the deposition due to their failure to identify and timely
5 produce responsive documents.

6 10. Plaintiffs believe that Defendants should be required to complete their
7 document production now and have offered Defendants until August 12 to complete their
8 document production.

9 11. Defendants propose postponing the close of fact discovery from December 1
10 until only January 17, 2012, effectively shortening Plaintiffs' time to conduct deposition
11 discovery by more than a month. Also, Defendants propose extending the deadline for
12 amending pleadings by *only 38 days*, which effectively reduces Plaintiffs' time to amend
13 their pleadings by nearly one month. Defendants' proposal will also effectively reduce
14 Plaintiffs' time for preparation of merit expert reports for exchange by 39 days and
15 effectively reduce Plaintiffs' time for expert discovery by 45 days.

16 12. Defendants' proposal does not change at all for the deadline for Plaintiffs'
17 response to any summary judgment motion filed by Defendants, reducing Plaintiffs' time to
18 prepare their case to respond to any such motion by 63 days – or two months.

19 13. Defendants have timely produced less than 2 million pages of documents (and
20 in violation of the current scheduling order, an additional 700,000 pages of documents on
21 August 1).

22 14. Attached hereto as Exhibit A is a true and correct copy of a July 28, 2011
23 email from John Pernick to me and Josh Devore.

24 15. Attached hereto as Exhibit B is a true and correct copy of Josh Devore's July
25 28 response to Mr. Pernick's email.

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1 I declare under penalty of perjury that the foregoing facts are true and correct and that
2 this declaration was executed on August 3, 2011.

3 Dated: August 3, 2011

4 SCOTT+SCOTT LLP

5 By: /s/ Joseph P. Guglielmo

6 Joseph P. Guglielmo

7 500 Fifth Avenue

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9 New York, NY 10110

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record and additional persons listed below:

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8 **2:09-cv-00037-MJP Notice will not be electronically mailed to:**

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